WaiversFirst Name   Last Name   Claim Number
██████   ██████   W-15-0008
Amount   OGC Received Date   Assigned To   Assigned Date
$25943.05   04/23/2015   Stephen Hess 04/24/2015
EPA Decision EPA Decision Date   Amount Approved   Status
DENIED   05/22/2015   CLOSED
Appeal   Comments
No   5/22/15-
            approved waiver for one moth's pay periods in Feb 2007; denied waiver
request the remaining pay periods
            Locality pay error -incorrect locality pay for Atlanta Ga. instead of RUS
            4/24/15 email:
            Steve

            I have put in your CRFLO in-box a new waiver request for EPA employee ██
██████ , received 4/23/15. This waiver request deals with erroneous
payments of pay when ██████ was paid at the locality rate of pay for
Atlanta Ga. instead of for Jacksonville Fla. (which according to the OPM
Pay tables is in the category of rest of the US (RUS) for locality pay
purposes.   This error occurred over 7 years and the debt owed is
substantial. The are many locality pay error waiver decisions in the
elibrary to look at and I have copied two of them and put them in the file
that I left in your box.

            The file I am leaving you is complete, having requested and received today
Leave and Earnings Pay Statements for the pay periods immediately before
the error first arose (2006) and for the pay periods after the personnel
action that caused the error in Jan 2007. The file also includes the OPM
pay tables for 2006 and 2007.

            Please prepare a draft decision and submit it to me for my review by
c.o.b. May 20, 2015. If you want to discuss the merits of the waiver
request or have any other questions please don't hesitate to ask .

            Finally, the waiver requests are sensitive as you can imagine and you
should store the waiver file in a locked cabinet in your office when you
are not working on it, please. Also, the documents in the file are all
placed in a file folder and stored in a locked file cabinet after we issue
the decision, so please keep all of the docs and email copies etc I am
putting in the file. I have been writing these waiver decisions in an
email back to the requesting employee (no longer are we writing a
memorandum) with a cc to folks in OCFO and the Interior Business Center
which handles waivers for OCFO

Thanks

Richard Feldman
Assistant General Counsel and Claims Officer
Civil Rights and Finance Law Office
Office of General Counsel
U.S. EPA
(o) 202-564-5434   (f) 202-564-5432

Type
Locality Pay

Attachments
██ ,

This email is in response to your Request for Waiver dated March 4, 2015,
wherein you requested an approval of a waiver for $25,943.05. For the
reasons set forth herein, your request for waiver is approved in part for
the erroneous payments made for pay periods ending (PPE) February 3, 2007
through March 3, 2007. A waiver is denied for all of the remaining pay
periods ending in July 2014.

Briefly stated, the record indicates that for the pay periods ending
February 3, 2007 through July 22, 2014, you were overpaid salary, which at
this time is a net amount of $25,943.05. Due to an administrative error,
the Agency continued to pay you as if your duty station was Atlanta,
Georgia. However, your duty location was █████████████ . The
overpayment was the result of locality pay differences for the Atlanta
area and the "Rest of the United States" (RUS), which includes
████████

In your request for waiver, you indicate you first became aware of the
error in July 2014 when you reviewed your biweekly Civilian Leave and
Earnings Statement (LES), and noticed a change in your tax withholding.
This resulted in you contacting your administrative office, which then
issued a Notification of Personnel Action Standard Form 50 (SF-50)
correcting your duty station to reflect ████████████ . You contend
that you had no prior knowledge of the error. In this regard, you state
that in 2007 you received a small increase in take home pay (approximately
$60 per pay period). However, you apparently did not realize that the
increase was caused by the fact that your pay was changed to an amount
based on the Atlanta locality pay area, not ██████████ You are
requesting a waiver based on the fact the overpayments were caused by
administrative error and because you were not at fault in this matter.

Under 5 U.S.C. § 5584, I have the authority to waive collection of erroneous payments of pay or allowances if collection would be against equity and good conscience and not in the best interest of the United States, provided there is no indication of fraud, fault, misrepresentation, or lack of good faith on the part of the employee. Waiver is precluded if the employee is aware or should have been aware that he/she was being overpaid- the employee is deemed to be at fault. B-271308, April 18, 1996. In the present case, I find that the erroneous payments were caused by Agency administrative error.

The only issue is whether you knew or should have suspected a pay error based upon information contained in your LESs and SF-50. Generally, if an employee has records which, if reviewed, would indicate an overpayment and the employee fails to review these documents for accuracy, then the employee is not without fault and waiver will be denied. B-226465, March 23, 1988. The application of this general rule depends on the circumstances and must be determined on a case-by-case basis.

In determining whether an employee's actions are reasonable with regard to an overpayment, I may examine such matters as the employee's position, knowledge, experience and length of service. B-222383, October 10, 1986. At the time the erroneous payments began in January 2007, you had been employed with the federal government for approximately 20 years. It is my view that your experience under the general schedule pay system would have caused a reasonable person to carefully scrutinize all documents pertaining to pay, especially with the increase in pay, as shown in your LESs in January and February 2007.

The record indicates that you were reassigned from Atlanta to ▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮▮, at which time your pay was adjusted for the change in locality pay from Atlanta to RUS, which was correct for your new Jacksonville duty station. In January 2007, you were reassigned to the immediate office in the ▮▮▮▮▮▮▮▮▮▮▮▮ in Atlanta although your duty station remained in ▮▮▮▮▮▮. Your SF-50 effective January 21, 2007, however, shows an adjustment in locality pay for Atlanta and an Atlanta duty station. This is when the administrative error occurred

Each year in January, the Office of Personnel Management (OPM) issues standard pay charts showing an employee's pay rates based upon specified geographic areas. These charts inform federal employees of their proper pay. The pay charts for 2007 show the pay for the RUS ($98,041 for a GS 13 Step 10) and Atlanta ($100,869 for a GS 13 Step 10) locality pay areas. In addition, for the PPE ending February 3, 2007, the first full pay period after the administrative error occurred, your gross pay was increased from $98,041.00 to $100,869.00 (the gross pay for Atlanta), even

though your grade and step (GS 13 Step 10) remaindered the same. In this regard, you stated in your waiver request that you attributed this increase to "a cost of living adjustment or benefit reduction change." Nonetheless, it is significant to note that the LESs for the pay periods ending January 20, 2007 and February 3, 2007 show that the increase was based on a change in locality pay. The LES for PPE January 20, 2007 show a "Locality Adjustment" of $11,002.00 in block 7, and a "Locality %" of 12 .64%, in block 9, the locality percentage for ███████   The LES for PPE February 3, 2007 show a "Locality Adjustment" of $13,830.00 in block 7, and a "Locality %" of 15.89%, in block 9, the locality percentage for Atlanta.

Under these circumstances I believe that with reasonable diligence you had an opportunity to detect the erroneous payments. My decisions and those of the Comptroller General stress the importance of employees monitoring their LESs and other pay documents. Leave and Earnings Statements and other pay documents are provided to employees so that they will use them to verify their employment and pay status. The decisions of the Comptroller General have long held that if an employee does not monitor his pay documents, an employee is not free from fault and the resulting debt will not be waived. B-226465, March 23, 1988.

The record shows that your pay increase at the beginning of 2007 was the result of an erroneous change in the calculation of your locality pay. Ordinarily, I would expect a federal employee to know the basis underlying his/her salary as reflected in LESs and the OPM pay charts. I believe that the sudden jump in pay should have alerted you to an error in your locality pay. Under these circumstances, I believe that with reasonable diligence, you did have an opportunity to detect the erroneous payments within a reasonable period of time.

Under the provisions of 5 U.S.C. 5584, the Claims Officer may waive, in whole or in part, a claim arising out of an erroneous payment of pay. I find that one month after your organizational reassignment back to Atlanta and after the effective date of the 2007 locality pay adjustments (the first full pay period in January 2007) would have been enough time for you to examine the 2007 OPM pay charts and your LESs and discover the error. Therefore, your request for waiver is approved in part for the pay periods ending February 3, 2007 through March 3, 2007. A waiver is denied for the remaining pay periods ending July 22, 2014 .

I sincerely regret a more favorable reply cannot be made. I do realize that this overpayment and administrative delay in correcting the error has created a great inconvenience for you. Under 40 C.F.R. §13.11(c) (iii), I have the delegated authority to waive all or part of the interest,

penalty, and administrative charges which have accrued on this debt. In this regard, I am directing the Department of Interior, Interior Business Center (IBC) to waive any portion that will be collected attributable to interest, penalty, and administrative charges. In addition, IBC should calculate the partial waiver amount and collect the remaining portion of the debt.

Richard Feldman
Assistant General Counsel and Claims Officer
Civil Rights and Finance Law Office
Office of General Counsel
U.S. EPA
(o) 202-564-5434   (f) 202-564-5432